

### **REMARKS**

This amendment is responsive to the office action dated April 10, 2007. Claims 17-46 are pending and stand rejected. The rejected claims 17 and 32 are amended and the Examiner's reconsideration of these claims is respectfully requested.

#### ***Discussion of 112 Rejections***

In paragraph 3 of the office action, the Examiner rejects claims 17-31, indicating that claim 17 recites "vendor data sites," for which there is no description in the specification. The Examiner points to claim 17, lines 3 and 5, as reciting vendor data sites. To that end, Applicant has made such amendments because other locations in the claims cite "vendor sites." In addition, Applicant respectfully submits that Figure 1 shows vendor terminals L1-Ln (representative of "vendor sites"). By way of one example, at page 15, paragraph 0051, the specification describes that the "vendors may have desktop personal computers incorporating live-action, color video with standard voice telephone lines via networks and modems." Clearly, the video just by itself would constitute **data** stored on a desktop personal computer. Furthermore, at page 19, paragraph 0062, the specification indicates that "central traffic control system TIS directs and exchanges on-line and off-line traffic between the **vendor** and buyer **sites**..." Moreover, the terminology "vendor locations" is liberally referenced throughout the specification. Applicant respectfully submits that the terminology used in the claims is well-supported by his specification and requests the Examiner to either withdraw the rejection under 35 U.S.C. Section 112. With respect to the Examiner's observation that the term "data site" is generally known in the art as a location on the World Wide Web and describes a web site accessible via the Internet,

Applicant respectfully submits that his specification describes online access via a computer to a vendor site.

***Discussion of 103 Rejections***

In paragraph 5, the Examiner rejected claims 17-27, 29-42, and 44-46 under 35 U.S.C. Section 103(a) as unpatentable over Shavit et al. in view of Lockwood. The Examiner alleges that Shavit differs from claims 17, 22, 24, 26-27, and 29 only in that it does not selectively provide video data for display by an active buyer terminal in accordance with types of merchandise and/or services relating to areas of interest. However, the Examiner further alleges that Lockwood teaches the desirability of having a central processor select an appropriate vendor-supplied data source associated with the customer's request, for output to the customer as a high-resolution audio-visual presentation such that it would have been obvious to one of ordinary skill to provide such selective video data provision as taught by Lockwood, within the system of Shavit in order to enhance sales communication by providing buyers with a video image of the merchandise and a more efficient means of selecting goods and services from a plurality of vendors by providing customized audio/video presentations based on the buyer's area of interest.

Although Applicant understands the Examiner's rationale, Applicant respectfully submits that if Shavit does not even disclose provision of any video data in the context of the claimed invention, any teaching of "selective video data provision" in Lockwood is not without hindsight beyond that permitted by the standard set by the decision in *KSR International Co. v. Teleflex Inc. et al.* The Supreme Court set the standard for evaluating obviousness in its recent decision

(*KSR International Co. v. Teleflex Inc. et al.* (550 U.S. 127 S. Ct. 1727 (2007))) to be “expansive and flexible” and “functional.” But, that standard is not controlling. Instead the various noted factors only “can” or “might” be indicative of obviousness based on the facts. Even given that expansive standard, the Supreme Court in *KSR* enunciated the following principles:

“[w]hen a work is available in one field of endeavor, design incentives and other market forces can prompt variations of it, either in the same field or a different one. If a person of ordinary skill can implement a predictable variation, Section 103 likely bars it patentability. For the same reason, if a technique has been used to improve one device, and a person of ordinary skill in the art would recognize that it would improve similar devices in the same way, using the technique is obvious unless its actual application is beyond his or her skill....[A] court must ask whether **the improvement is more than the predictable use of prior art elements according to their established functions.**

The Supreme Court in *KSR* also stated that:

a patent composed of several elements is not proved obvious **merely by demonstrating that each of its elements was independently known in the prior art.**

The Supreme Court in *KSR* has also stated that:

[o]ften, it will be necessary for a court **to look to interrelated teachings of multiple patents**; the effects of demands known to the design community or present in the market place.

Further, the Supreme Court stated in *KSR* that:

The Court [in *United States v. Adams*, 383 U.S. 39, 51-52 (1966)] relied upon the corollary principle **that when the prior art teaches away from combining certain known elements, discovery of a successful means of combining them is more likely to be nonobvious.**

Keeping the *KSR* standard in mind, Applicant submits that the Examiner points to the “provision of video display” by television transmission as satisfying the claims at issue. To that end, Lockwood indicates at column 18, lines 54-57 the following:

*“central processor 222, which selects the appropriate data sources for transmission to the local cable television company 210 and routed via the cable network 281 to the customer’s terminal 202.”*

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In Lockwood, the customer activates the audio-visual presentations by requesting access to the system "via the telephone network 280 to the data processing center 201." A voice response system 221 at the data processing center accepts questions from its voice synthesis storage. Customer requests for audio-visual presentation are relayed from the voice response system to the central processor 222, which selects the appropriate data sources for transmission to the local cable television company. Applicant respectfully submits that the Examiner is making an obviousness rejection, **merely by demonstrating that each of its elements was independently known in the prior art.**

Reconsideration of this application and allowance of the claims as presented here is respectfully requested.

Respectfully submitted,

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